

REMARKS / ARGUMENTS

The present application includes pending claims 1-36. The Applicant respectfully submits that the claims define patentable subject matter.

Claims 1-36 are rejected under 35 U.S.C. § 103(a) as being unpatentable by USP 6,766,956 ("Boylan") in view of USP 5,675,647 ("Garneau"). The Applicant respectfully traverses these rejections at least based on the following remarks.

I. RESPONSE TO EXAMINER'S ARGUMENTS

The Examiner states the following in pages 2-3 of the Final Office Action:

"Applicant presents that the combination of Boylan and Garneau does not disclose or suggest the Claim 1, 7, 13, and 21 limitation of:

"associating, outside the home, a plurality of key codes with a corresponding plurality of media files ... authorizing communication of one of said plurality of media files corresponding to at least one of said associated plurality of key codes, to the home, said authorizing using said associated plurality of key codes"

because "Garneau's promotion code is associated with providing access to a service for the subscriber, and it is not associated with the media, as alleged by the Examiner."

Applicant additionally presents that "[i]n this regard, Garneau's promotion code is not associated with any media, and it is also not used to authorize the communication of any media" (emphasis added by Applicant, with particular reference to Reply Pages 15 and 18; and further reference to the Abstract of Garneau). The Examiner respectfully disagrees.

As summarized by Applicant (Reply Page 16), the Examiner has previously presented that **Boylan teaches "associating, outside the home, a plurality of key codes with a corresponding plurality of media files"** (with particular reference to Boylan's "codes", as defined in

Col. 1 Lines 46-65, such as a bar-code, are associated with media from sites such as a web-site, a television distribution facility, or a data service provider, as described in Col. 2 Lines 3-64) and the **Garneau demonstrates the "authorizing" clause** (as summarized by Applicant in Reply Pages 16-17). The Examiner submits that Garneau is not exclusively directed to providing access to a "service" (as argued by Applicant), but also describes accessing a "program" such as pay per view content (as described in Col. 2 Lines 7-16). **It is noted that Boylan also describes accessing pay per view content by way of a code** (Col. 12 Lines 37-52). **The Examiner additionally submits that Garneau discloses the claimed "authorizing" by way of a "validation code" entered by a subscriber attempting to access encrypted content** (Col. 7 Line 39-Col. 8 Line, as previously presented in Office Action Page 4).

Therefore, it is the Examiner's position that the combination of Boylan and Garneau does in fact teach the limitations of Claims 1, 7, 13, and 21."

The Examiner equates Boylan's bar-code associated with the TV programs, text, graphics, audio and video media to Applicant's **"associating ...key codes with a corresponding plurality of media files"**. The Examiner also equates Boylan's scanned codes to Applicant's **"key sequences"** in the alleged "key codes". The Examiner concedes that Boylan does not disclose or suggest that the same bar-code (the alleged "key codes **associated with media**"), is used **for authorizing the communication of the media** (see Final Office Action in page 5).

The Examiner looks to Garneau to disclose Boylan's above deficiencies, namely, "authorizing communication ... of media files corresponding to...said associated plurality of key codes," and "said authorizing using said associated plurality of key codes," as recited in Applicant's claim 1. In other words, the Examiner alleges that

Garneau overcomes Boylan's deficiencies by disclosing that **the same key code**, which is used to associate with the media (i.e., pay per view programs), is also used **for authorizing the communication of the media**.

The Examiner's arguments are still deficient for the following reasons:

1) The Examiner equates Garneau's pay per view program "**promotion code**" to Applicant's "associating **key codes** with corresponding media files". The Examiner then alleges that Garneau discloses "authorizing" by way of a "**validation code**" entered by a subscriber, attempting to access encrypted content. In other words, the Examiner seems to equate Garneau's "validation code" to be the same as Garneau's "promotion code" (the alleged "key code") entered by the subscriber.

The Examiner's argument is deficient. Garneau (see col. 7, lines 39-54) discloses that the "validation code" is rebuilt from an encrypted "event request code", which is generated by the subscriber's terminal processor 11, based on **both** the program code and the subscriber's terminal serial number (see col. 6, lines 23-59). In other words, Garneau discloses the alleged "authorizing" uses the "validation code" (i.e., the "event request code"), which is not the same as the "**promotion code**" (the alleged "key code"), as alleged by the Examiner. In this regard, Garneau does not disclose or suggest that **the same key code** is used to associate with the media (i.e., pay per view programs), is also used **for authorizing the communication of the media**. Accordingly, Garneau does not disclose or suggest "authorizing communication ... of

media files corresponding to...said associated plurality of key codes,” as recited in Applicant’s claim 1.

2) Even assuming, *arguendo*, that Garneau’s “validation code” is the alleged “key codes associated with the media files” (which it is not), Garneau discloses that the alleged “authorizing” process requires the **validation of the subscriber’s terminal serial number, prior to verifying the program code** stored in the program table 35 (see col. 8, lines 1-27). Otherwise, no password will be issued to the subscriber to complete the alleged “authorizing” process to view the pay per view content. In this regard, Garneau, also **does not** disclose or suggest “said **authorizing using said associated plurality of key codes**,” as recited in Applicant’s claim 1.

Based on the above rationale, the Applicant maintains that the combination of Boylan and Garneau does not establish a *prima facie* case of obviousness to reject independent claim 1, and claim 1 is submitted to be allowable.

REJECTION UNDER 35 U.S.C. § 103

In order for a *prima facie* case of obviousness to be established, the Manual of Patent Examining Procedure, Rev. 6, Sep. 2007 (“MPEP”) states the following:

The key to **supporting** any rejection under 35 U.S.C. 103 is the **clear articulation** of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007) noted that **the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit**. The Federal Circuit has stated that “rejections on obviousness cannot be sustained

with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.”

See the MPEP at § 2142, citing *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), and *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval). Further, MPEP § 2143.01 states that “the mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art” (citing *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007)). Additionally, if a *prima facie* case of obviousness is not established, the Applicant is under no obligation to submit evidence of nonobviousness:

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

See MPEP at § 2142.

II. The Combination of Boylan and Garneau Does Not Render Claims 1-36 Unpatentable

The Applicant now turns to the rejection of claims 1-36 under 35 U.S.C. 103(a) as being unpatentable by the combination of Boylan and Garneau.

A. Rejection of Independent Claims 1, 7, 13, and 21

With regard to the rejection of independent claim 1 under 103(a), the Applicant submits that the combination of Boylan and Garneau does not disclose or suggest at

least the limitation of “associating, outside of the home, a plurality of key codes with a corresponding plurality of media files ...authorizing communication of one of said plurality of media files corresponding to at least one of said associated plurality of key codes, to the home, said authorizing using said associated plurality of key codes,” as recited by the Applicant in independent claim 1.

The Final Office Action states the following:

“Boylan teaches...associating, outside of the home, a plurality of key codes with a corresponding plurality of media files, each of said plurality of key codes corresponding to a plurality of key sequences ("codes", as defined in Col. 1 Lines 46-65, such as **a bar-code, are associated with media** from sites such as a web-site, a television distribution facility, or a data service provider, as described in Col. 2 Lines 3-64)”

See the Final Office Action at page 4 (emphasis added). Regarding Boylan, the Examiner concedes the following:

“Boylan discloses the use of key codes for accessing promotional content communicated from a broadcast distribution facility, as described above, but **does not explicitly describe authorizing communication of one of said plurality of media files corresponding to at least one of said associated plurality of key codes, to the home, said authorizing using said associated plurality of key codes; and communicating a media file if said communication is authorized.**”

See the Final Office Action at page 5 (emphasis added). The Examiner concedes that Boylan does not disclose or suggest that the same bar-code (the alleged **“key codes associated with media”**) is used **for authorizing the communication of the media**. The Examiner looks to Garneau to disclose Boylan’s above deficiencies. In

other words, the Examiner alleges that Garneau overcomes Boylan's deficiencies by disclosing that **the same key code, which is associated with the media** (i.e., TV programs, text, graphics, audio video media etc.), is also used **for authorizing the communication of the media**. The Final Office Action states the following regarding Garneau:

"In a similar field of invention, Garneau teaches a method and system for broadcasting promotions of service available to valid subscribers, where **each promotion is associated with a specific promotion code** (Abstract). In particular, **Garneau discloses that a code entered by the subscriber is validated at Checking System 24 of Fig. 1 and, when the code is determined to be valid**, the subscriber is provided access to the promotional content (as described in Col. 7 Line 39-Col. 8 Line 27).

Both Boylan and Garneau teach similar techniques for the distribution of promotional content in response to a user entering a corresponding access code. Boylan's system unconditionally distributes the promotional content to the user in response to the entry of the code. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Boylan to include the authorization process prior to distribution, as taught by Garneau, so that premium content or content that requires payment (i.e. pay-per view) can also be distributed to requesting users (as Garneau suggests in Col. 1 Lines 13-47), which would generate revenue for the broadcaster."

See the Final Office Action at pages 5-6 (emphasis added). The Examiner is referred to Applicant's above arguments in section I, namely:

1) Garneau discloses the alleged "authorizing" uses the "validation code" (i.e., the "event request code"), which is not the same as the **"promotion code"** (the alleged "key code"), which the Examiner alleges. In this regard, Garneau does not disclose or suggest that **the same key code** is used to associate with the media (i.e., pay per view

programs), is also used **for authorizing the communication of the media**. Accordingly, Garneau does not disclose or suggest “authorizing communication ... of media files corresponding to...said associated plurality of key codes,” as recited in Applicant’s claim 1.

2) Even assuming, arguendo, that Garneau’s “validation code” is the alleged “key codes associated with the media files” (which it is not), Garneau discloses that the alleged “authorizing” process require the **validation of the subscriber’s terminal serial number, prior to verifying the program code** stored in the program table 35 (see col. 8, lines 1-27). Otherwise, no password will be issued to the subscriber to complete the alleged “authorizing” process to view the pay per view content. In this regard, Garneau also **does not** disclose or suggest “said **authorizing using said associated plurality of key codes**,” as recited in Applicant’s claim 1. Therefore, Garneau does not overcome Boylan’s deficiencies.

Based on the foregoing rationale, the Applicant maintains that the combination of Boylan and Garneau does not disclose or suggest at least the limitation of “associating, outside of the home, a plurality of key codes with a corresponding plurality of media files ...authorizing communication of one of said plurality of media files corresponding to at least one of said associated plurality of key codes, to the home, said authorizing using said associated plurality of key codes,” as recited by the Applicant in independent claim 1. The Applicant respectfully requests that the rejection to claim 1 under 103(a) be withdrawn, and submits that claim 1 is allowable.

Independent claims 7, 13, and 21 are similar in many respects to the method disclosed in independent claim 1. Therefore, the Applicant submits that independent claims 7, 13, and 21 are also allowable over the references cited in the Office Action at least for the reasons stated above with regard to claim 1.

B. Rejection of Dependent Claims 2-6 and 31-33, 8-12 and 34-36, 14-20, and 22-30

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 7, 13, and 21 under 35 U.S.C. § 103(a) as being unpatentable by the combination of Boylan and Garneau has been overcome and requests that the rejection be withdrawn. Additionally, claims 2-6 and 31-33, 8-12 and 34-36, 14-20, and 22-30 depend from independent claims 1, 7, 13, and 21, respectively, and are, consequently, also respectfully submitted to be allowable.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 1-36.

CONCLUSION

Based on at least the foregoing, the Applicant believes that all claims 1-36 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and requests that the Examiner telephone the undersigned Patent Agent at (312) 775-8093.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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/ Frankie W. Wong /
Frankie W. Wong
Registration No. 61,832
Patent Agent for Applicant

McANDREWS, HELD & MALLOY, LTD.
500 WEST MADISON STREET, 34TH FLOOR
CHICAGO, ILLINOIS 60661
(312) 775-8093 (FWW)